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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

-and-

PACIFIC GAS & ELECTRIC COMPANY,

Debtors.

- ☐ Affects PG&E Corporation
☒ Affects Pacific Gas and Electric Company
☐ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Case No.: 19-30088-DM

Chapter 11

**MOTION TO FILE REDACTED
DOCUMENT AND TO FILE DOCUMENTS
UNDER SEAL; DECLARATION OF
RICHARD A. LAPPING**

Date: May 9, 2019

Time: 9:30 a.m.

Place: Courtroom 17

450 Golden Gate Avenue, 16th Floor

San Francisco, California

Judge: Hon. Dennis Montali

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Creditor Valero Refining Company-California (“Valero”) hereby submits this motion (“Seal Motion”) pursuant to Bankruptcy Code § 107(b), 11 U.S.C., Federal Rule of Bankruptcy Procedure 9018, the Court’s *New District Wide Procedures for Electronically Filing Sealed and Redacted Documents*, and District Court Local Rule 79-5, made applicable by Bankruptcy Local Rule 1001-2(a) (the “Seal Procedures”), for entry of an order granting or denying the redaction and sealing of documents as described in this Seal Motion and the Declaration of Richard A. Lapping (the “Declaration”).

1 As set forth in the Declaration, Valero received in discovery copies of two insurance policies
2 (“Policies”) of Pacific Gas & Electric Company (“PG&E”) in the litigation case of VALERO
3 REFINING COMPANY-CALIFORNIA, a Delaware corporation v. PACIFIC GAS & ELECTRIC
4 COMPANY, a California corporation, pending as Case No. 2:17-cv-01350-TLN-EFB in United
5 States District Court for the Eastern District of California before the Honorable Troy L. Nunley,
6 United States District Judge (the “District Court Action”).

7 A stipulated protective order was entered in the District Court Action that permitted the
8 parties to designate documents produced in discovery as “CONFIDENTIAL– SUBJECT TO
9 PROTECTIVE ORDER.” PG&E placed that designation on the Policies when produced.

10 On April 23, 2019, PG&E and Valero reached a stipulation that allowed Valero to file the
11 Policies under seal pursuant to the Seal Procedures. (Docket 1630). On April 28, 2019, the Court
12 entered its Order approving the Stipulation. (Docket 1752).

13 Prior to filing this Seal Motion, Valero has filed a Motion for Relief from Stay (the “Stay
14 Motion”) to permit it to conclude the District Court Action. The Stay Motion is supported by the
15 Declaration of John Cox (“Cox Declaration”). In the Stay Motion, Valero discusses certain terms
16 and conditions of the Policies as they pertain to Valero’s request for relief from stay. Those
17 provisions are redacted in the Stay Motion as filed, and are subject to the Seal Motion’s request to
18 rule on the redactions. The Policies would be attached as Exhibits 3 and 4 to the Cox Declaration.

19 Valero is skeptical that the Policies or the contents thereof, were appropriately designated as
20 confidential under the protective order in the District Action, or if they were, that they remain
21 commercially confidential in the context of this bankruptcy case within the meaning of Bankruptcy
22 Code § 107(b). Nonetheless, Valero remains subject to the District Court’s protective order and
23 PG&E’s designation thereunder, and thus brings this Seal Motion under District Court Rule 79-5(e),
24 which provides:

25 **Documents Designated as Confidential or Subject to a Protective**
26 **Order.** If the Submitting Party is seeking to file under seal a document
27 designated as confidential by the opposing party or a non-party
28 pursuant to a protective order, or a document containing information

1 so designated by an opposing party or a non-party, the Submitting
2 Party's declaration in support of the Administrative Motion to File
3 Under Seal must identify the document or portions thereof which
4 contain the designated confidential material and identify the party that
5 has designated the material as confidential ("the Designating Party").
6 The declaration must be served on the Designating Party on the same
7 day it is filed and a proof of such service must also be filed.

8 (1) Within 4 days of the filing of the Administrative
9 Motion to File Under Seal, the Designating Party must
10 file a declaration as required by subsection 79-
11 5(d)(1)(A) establishing that all of the designated
12 material is sealable.

13 (2) If the Designating Party does not file a responsive
14 declaration as required by subsection 79-5(e)(1) and the
15 Administrative Motion to File Under Seal is denied, the
16 Submitting Party may file the document in the public
17 record no earlier than 4 days, and no later than 10 days,
18 after the motion is denied. A Judge may delay the
19 public docketing of the document upon a showing of
20 good cause.

21 As the Submitting Party under the foregoing local rule, Valero will, simultaneously with
22 filing the Seal Motion, serve PG&E as the Submitting Party with this Seal Motion and, by email to
23 its attorneys of record, a copy of the chambers copy of the Stay Motion that highlights the redacted
24 information, as well as copies of the Policies.

25 Dated: May 6, 2019

TRODELLA & LAPPING LLP

26
27 By: /s/ Richard A. Lapping
Richard A. Lapping
Attorneys for Valero Refining Company-
28 California

DECLARATION OF RICHARD A. LAPPING

I, Richard A. Lapping, declare as follows:

1 I am an attorney at law, licensed to practice in the State of California and admitted to
2 the bar of this Court. I am a partner with the firm of Trodella & Lapping LLP, attorneys for moving
3 party Valero Refining Company-California. I make this declaration in that capacity and, if called
4 upon to do so, I could and would testify of my own personal knowledge to the facts set forth herein.

5 2. This declaration ("Declaration") is submitted in support of Valero's Motion To File
6 Redacted Document And To File Documents Under Seal.

7 3. Except as otherwise indicated, all statements set forth in this Declaration are based
8 upon my personal knowledge or my review of relevant records and documents. If called upon to
9 testify, I could and would testify competently to the facts set forth in this Declaration.

10 5. Attached hereto as Exhibit 1 is a true and correct copy the Amended Stipulated
11 Protective Order entered in the District Court Action. Exhibit 1 will be filed in the public record of
12 this case.

13 4. Attached hereto as Exhibit 2 is a copy of the unredacted version of Valero's Motion
14 for Relief from Stay, highlighted to indicate proposed redactions. Exhibit 2 is not filed in the public
15 record of this case.

16 5. Attached hereto as Exhibits 3 and 4 are true and correct copies of the Policies that are
17 the proposed documents filed under seal. I am informed, based on the Declaration of John Cox, that
18 Exhibits 3 and 4 were produced and designated as confidential by PG&E in discovery in the District
19 Court Action. Exhibits 3 and 4 are not filed in the public record of this case.

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing information is true and correct.

22 Dated: May 6, 2019

23 /s/ Richard A. Lapping

24 Richard A. Lapping

EXHIBIT 1

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Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

VALERO REFINING COMPANY --
CALIFORNIA, a Delaware corporation,

Plaintiff,

vs.

PACIFIC GAS AND ELECTRIC COMPANY, a
California corporation,

Defendant.

) Case No. 2:17-CV-01350-TLN-EFB

) **[PROPOSED] AMENDED STIPULATED**
) **PROTECTIVE ORDER**

1 Plaintiff Valero Refining Company – California (“Valero”) and Defendant Pacific Gas and
 2 Electric Company (“PG&E”) (together, the “parties”), by and through their respective counsel of
 3 record, hereby stipulate and agree as follows:

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of confidential,
 6 proprietary, or private information for which special protection from public disclosure and from use
 7 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
 8 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
 9 parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
 10 to discovery and that the protection it affords from public disclosure and use extends only to the
 11 limited information or items that are entitled to confidential treatment under the applicable legal
 12 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
 13 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 141
 14 sets forth the procedures that must be followed and the standards that will be applied when a party
 15 seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information
 18 or items under this Order.

19 2.2 “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” Information or Items:
 20 information (regardless of how it is generated, stored or maintained) or tangible things that qualify for
 21 protection under Federal Rule of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
 23 their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or items that it
 25 produces in disclosures or in responses to discovery as “CONFIDENTIAL– SUBJECT TO
 26 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

27 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
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manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party, its counsel, or its insurer to serve as an expert witness or as a consultant in this action.

2.8 “HIGHLY CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” Information or Items: extremely sensitive “Confidential – Subject to Protective Order – Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of irreparable harm.

2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.12 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER,” or as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 **3. SCOPE**

3 The protections conferred by this Stipulation and Order cover not only Protected Material (as
4 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
5 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
6 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

7 However, the protections conferred by this Stipulation and Order do not cover the following
8 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the public record
11 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
12 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
13 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
14 Protected Material at trial shall be governed by a separate agreement or order.

15 **4. DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
21 limits for filing any motions or applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 Non-Party that designates information or items for protection under this Order must take care to limit
25 any such designation to specific material that qualifies under the appropriate standards. To the extent it
26 is practical to do so, the Designating Party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify – so that other portions of the
28 material, documents, items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to
3 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber
4 or retard the case development process or to impose unnecessary expenses and burdens on other
5 parties) expose the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated for
7 protection do not qualify for protection at all or do not qualify for the level of protection initially
8 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
9 mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
12 Discovery Material that qualifies for protection under this Order must be clearly so designated before
13 the material is disclosed or produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
16 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
17 legend "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL
18 – SUBJECT TO PROTECTIVE ORDER" to each page that contains Protected Material. If only a
19 portion or portions of the material on a page qualifies for protection, the Producing Party also must
20 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and
21 must specify, for each portion, the level of protection being asserted.

22 A Party or Non-Party that makes original documents or materials available for inspection need
23 not designate them for protection until after the inspecting Party has indicated which material it would
24 like copied and produced. During the inspection and before the designation, all of the material made
25 available for inspection shall be deemed "HIGHLY CONFIDENTIAL – SUBJECT TO
26 PROTECTIVE ORDER." After the inspecting Party has identified the documents it wants copied and
27 produced, the Producing Party must determine which documents, or portions thereof, qualify for
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1 protection under this Order. Then, before producing the specified documents, the Producing Party
2 must affix the appropriate legend (“CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or
3 “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”) to each page that contains
4 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins) and must specify, for each portion, the level of protection being asserted.

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
8 Designating Party identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony and specify the level of protection being asserted. When it is
10 impractical to identify separately each portion of testimony that is entitled to protection and it appears
11 that substantial portions of the testimony may qualify for protection, the Designating Party may
12 invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to have
13 up to 30 days to identify the specific portions of the testimony as to which protection is sought and to
14 specify the level of protection being asserted. Only those portions of the testimony that are
15 appropriately designated for protection within the 30 days shall be covered by the provisions of this
16 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up to
17 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
18 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL –
19 SUBJECT TO PROTECTIVE ORDER.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
21 other proceeding to include Protected Material so that the other parties can ensure that only authorized
22 individuals who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are
23 present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way
24 affect its designation as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
25 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page that
27 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
28

(including line numbers as appropriate) that have been designated as Protected Material and the level of protection being asserted by the Designating Party. The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 30-day period for designation shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, the Producing Party shall affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order. Upon request, the Receiving Party shall delete, destroy or return material that was inadvertently not designated appropriately under this order and the Designating Party shall reproduce those same materials with the appropriate designation.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
2 providing written notice of each designation it is challenging and describing the basis for each
3 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
4 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
5 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the
6 process by conferring directly (in voice to voice dialogue; other forms of communication are not
7 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
8 explain the basis for its belief that the confidentiality designation was not proper and must give the
9 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
10 and, if no change in designation is offered, to explain the basis for the chosen designation. A
11 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this
12 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
13 meet and confer process in a timely manner.

14 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
15 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
16 Local Rule 230 within 21 days of the initial notice of challenge or within 14 days of the parties
17 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each
18 such motion must be accompanied by a competent declaration affirming that the movant has complied
19 with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating
20 Party to make such a motion including the required declaration within 21 days (or 14 days, if
21 applicable) shall automatically waive the confidentiality designation for each challenged designation.
22 In addition, the Challenging Party may file a motion challenging a confidentiality designation at any
23 time if there is good cause for doing so, including a challenge to the designation of a deposition
24 transcript or any portions thereof. Any motion brought pursuant to this provision must be
25 accompanied by a competent declaration affirming that the movant has complied with the meet and
26 confer requirements imposed by the preceding paragraph.

27 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
28

1 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
 2 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
 3 Designating Party has waived the confidentiality designation by failing to file a motion to retain
 4 confidentiality as described above, all parties shall continue to afford the material in question the level
 5 of protection to which it is entitled under the Producing Party's designation until the court rules on the
 6 challenge.

7 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
 11 categories of persons and under the conditions described in this Order. When the litigation has been
 12 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 15 secure manner that ensures that access is limited to the persons authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER"
 17 Information or Items or "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER"
 18 Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating
 19 Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL –
 20 SUBJECT TO PROTECTIVE ORDER" or "HIGHLY CONFIDENTIAL – SUBJECT TO
 21 PROTECTIVE ORDER" only to:

22 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
 23 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
 24 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached
 25 hereto as Exhibit A;

26 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
 27 whom disclosure is reasonably necessary for this litigation and who have signed the
 28

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
3 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and Professional
7 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
11 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition
12 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
13 court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective
14 Order;

15 (g) the author or recipient of a document containing the information or a custodian or other
16 person who otherwise possessed or knew the information;

17 (h) any insurer or insurance counsel of Receiving Party and any Expert (as defined in this
18 Order) of the Receiving Party’s insurer or insurance counsel to whom disclosure is reasonably
19 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
20 (Exhibit A).

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Party is served with a subpoena or a court order issued in other litigation that compels
24 disclosure of any information or items designated in this action as “CONFIDENTIAL – SUBJECT
25 TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE
26 ORDER” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
28 the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
2 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
3 Order. Such notification shall include a copy of this Stipulated Protective Order; and

4 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
5 Party whose Protected Material may be affected.

6 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
7 court order shall not produce any information designated in this action as “CONFIDENTIAL –
8 SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO
9 PROTECTIVE ORDER” before a determination by the court from which the subpoena or order
10 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall
11 bear the burden and expense of seeking protection in that court of its confidential material – and
12 nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in
13 this action to disobey a lawful directive from another court.

14 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
15 **THIS LITIGATION**

16 (a) The terms of this Order are applicable to information produced by a Non-Party in this
17 action and designated as “CONFIDENTIAL– SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
18 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” Such information produced by Non-
19 Parties in connection with this litigation is protected by the remedies and relief provided by this Order.
20 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
21 protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
23 Party’s confidential information in its possession, and the Party is subject to an agreement with the
24 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

25 1. promptly notify in writing the Requesting Party and the Non-Party that some or
26 all of the information requested is subject to a confidentiality agreement with a Non-Party;

27 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order
28 in this litigation, the relevant discovery request(s), and a reasonably specific description of the

1 information requested; and

2 3. make the information requested available for inspection by the Non-Party.

3 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
4 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
5 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
6 protective order, the Receiving Party shall not produce any information in its possession or control
7 that is subject to the confidentiality agreement with the Non-Party before a determination by the court.
8 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
9 protection in this court of its Protected Material.

10 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

11 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
12 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
13 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
14 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
15 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
16 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
17 Bound" that is attached hereto as Exhibit A.

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

20 (a) Non-Waiver of Protection

21 Pursuant to Fed. R. Evid. 502(d), any party's production of documents covered by an
22 applicable privilege or protection shall not constitute a waiver of the privilege or protection with
23 respect to those documents or the subject matter of those documents in this case or any other federal or
24 state proceeding. Nothing in this paragraph shall require a party to produce documents that are
25 protected from disclosure. This paragraph shall be interpreted to provide the greatest protection
26 allowed by Federal Rule of Evidence 502, or otherwise permitted by law.

27 Nothing herein is intended to or shall serve to limit a party's right to conduct a review of
28 documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation

1 of privileged and/or protected information before production.

2 (b) "Clawback" of Documents

3 Any party that inadvertently discloses or produces a document or ESI that it considers
4 privileged or otherwise protected from discovery will promptly give written notice to the Receiving
5 Party, identifying the document or ESI in question, the asserted privilege or protection, and the
6 grounds therefor. Any party that receives a document that is clearly privileged shall promptly give
7 written notice to the Producing Party and identify the document(s) which appear to be privileged.

8 Upon receipt of notice of the assertion of privilege or protection over produced documents or
9 ESI, the Receiving Party will act in accordance with Federal Rule of Civil Procedure 26(b)(5)(B),
10 including:

11 (1) to whatever extent it contests the assertion of privilege or protection, promptly so
12 notify the Producing Party, and sequester and refrain from using or disclosing the contested
13 documents and ESI pending resolution of the contest by the parties or the Court; and

14 (2) to whatever extent the Receiving Party does not contest the assertion of privilege or
15 protection, promptly return or destroy the applicable document(s) and/or ESI, take reasonable steps to
16 identify and destroy each copy thereof and all information derived therefrom (normally reasonable
17 diligence will not include disaster recovery media), and promptly certify in writing to the Producing
18 Party that it has done so.

19 In the event of a contested assertion of privilege or protection over produced documents that
20 cannot be resolved amicably after meeting and conferring in good faith, either party may bring the
21 contest to the attention of the Court by motion. The Producing Party must preserve the contested
22 information until the claim is resolved.

23 **12. MISCELLANEOUS**

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
25 its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
27 Party waives any right it otherwise would have to object to disclosing or producing any information or
28

1 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
2 right to object on any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3 Filing Protected Material. Without written permission from the Designating Party or a
5 court order secured after appropriate notice to all interested persons, a Party may not file in the public
6 record in this action any Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal
8 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to
9 Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected
10 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under
11 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local
12 Rule 141 is denied by the court, then the Receiving Party may file the Protected Material in the public
13 record unless otherwise instructed by the court.

14 **13. FINAL DISPOSITION**

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
16 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As
17 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the
19 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to
20 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day
21 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
23 compilations, summaries or any other format reproducing or capturing any of the Protected Material.
24 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion
25 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
26 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if
27 such materials contain Protected Material. Any such archival copies that contain or constitute
28

1 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

2
3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED: February 7, 2018

/s/ Alexander Bukac (as
5 authorized on February 7, 2018)

6 NATHAN R. JASKOWIAK
7 ALEXANDER J. BUKAC
8 KEESAL, YOUNG & LOGAN
9 Attorneys for Plaintiff
10 VALERO REFINING COMPANY –
11 CALIFORNIA

12 MIKAL C. WATTS
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17 VALERO REFINING COMPANY –
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19
20
21
22
23 DATED: February 7, 2018

/s/ Laurie Edelstein
24 LAURIE EDELSTEIN
25 SARAH K. JACKEL
26 MICHAEL DOCKTERMAN
27 STEPTOE & JOHNSON LLP
28 Attorneys for Defendant
PACIFIC GAS & ELECTRIC COMPANY

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: February 7, 2018.


25 HONORABLE EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on February __, 2018 in the case of *Valero Refining Company – California v. Pacific Gas & Electric Company*, No. 17 Civ. 1350 (TLN)(EFB). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

From: caed_cmecf_helpdesk@caed.uscourts.gov
To: CourtMail@caed.uscourts.dcn
Subject: Activity in Case 2:17-cv-01350-TLN-EFB Valero Refining Company California v. Pacific Gas & Electric Company Stipulation and Order.
Date: Thursday, February 08, 2018 9:55:45 AM

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Case Name: Valero Refining Company California v. Pacific Gas & Electric Company

Case Number: [2:17-cv-01350-TLN-EFB](#)

Filer:

Document Number: [31](#)

Docket Text:

AMENDED STIPULATED PROTECTIVE ORDER signed by Magistrate Judge Edmund F. Brennan on 2/7/2018. (Becknal, R)

2:17-cv-01350-TLN-EFB Notice has been electronically mailed to:

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Document description:Main Document

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[7f231dbccf173d2342486f60677b9f5e0e2c6d150c93f782ed6daffc2c09872bf8bd
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